

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

SHARON LOWERY,

Petitioner,

v.

COMMISSIONER, SOCIAL SECURITY
ADMINISTRATION,

Defendant.

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Case No. 2:19-cv-0240-RSP

MEMORANDUM ORDER

Currently before the Court is the Plaintiff's Application and Affidavit for Attorney's Fees Under 28 U.S.C. §2412 The Equal Access to Justice Act (Dkt. No. 15), filed by Petitioner on June 4, 2021. The motion seeks compensation for 20.3 hours at the adjusted statutory rates permitted by the Act, for a total of \$3,978.80. The Commissioner has filed no opposition to the requested award of fees.

The Equal Access to Justice Act (EAJA), 28 U.S.C. §2412, allows a prevailing party in litigation against the United States, including a petitioner for Social Security benefits, to recover her attorney's fees "unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." *Id.* at §2412 (d)(1)(a). The Supreme Court has explained that "EAJA fees are determined not by a percent of the amount recovered, but by the 'time expended' and the attorney's 'hourly rate,'" which is statutorily capped. *Gisbrecht v. Barnhart*, 535 U.S. 789, 794, 122 S.Ct. 1817, 152 L.Ed.2d 996 (2002). *See generally, Murkeldove v. Astrue*, 635 F.3d 784, 789 (5th Cir. 2011). The Commissioner does not contend, nor does the Court find, that the position of the government was substantially justified or that any special

circumstances exist rendering an award unjust. The Court finds that Petitioner's requested fee is appropriate.

Accordingly, **IT IS ORDERED** that Defendant will pay Petitioner \$3,978.80 in EAJA fees, which amount is in addition to, and not out of, Petitioner's past due benefits. In accordance with the Supreme Court's decision in *Astrue v. Ratliff*, 130 S.Ct. 2521 (2010), this award will be payable to Petitioner, by delivery to her counsel of record.

SIGNED this 16th day of November, 2022.



ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE